IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1072 of 2006
IN
CIVIL APPLICATION NO.2521 OF 2006
in
MISC. CIVIL APPLICATION [ST] NO.2336 OF 2006
IN
SPECIAL CIVIL APPLICATION NO.9984 OF 2004
WITH
CIVIL APPLICATION NO.10092 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KASAAR INNOVATIVE FOODS LTD. - Appellant(s)
Versus
EMPLOYEE'S PROVIDENT FUND ORGANISATION - Respondent(s)

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Appearance :
MR DIPAK R DAVE for Appellant
MR PJ MEHTA for Respondent

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 01/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. Admit. At the request of the learned advocates, the Appeal is finally heard today.

2. Learned advocate Shri Dave appearing for the appellant has submitted that, being aggrieved by an order dated 30th June, 2003 passed under the provisions of Section 7(A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act”), the appellant had filed Review Application before the Authority which had passed the said order. As the Review Application had been rejected, instead of proceeding further with an Appeal filed under Section 7(I) of the Act, the appellant had filed Special Civil Application No.9984 of 2004. The said petition had been rejected and, therefore, a Letters Patent Appeal had been filed by the appellant. The said Letters Patent Appeal had been withdrawn so as to approach the learned Single Judge again by filing Review Application. The said Review Application filed by the appellant has been rejected and, therefore, the present Appeal has been filed by the appellant.

3. We have heard learned advocate Shri Dave appearing for the appellant and learned advocate Shri Mehta appearing for the respondent.

4. Learned advocate Shri Dave appearing for the appellant has prayed for withdrawal of the appeal as well as the petition so as to enable the appellant to approach the appellate authority by filing an appeal under Section 7(I) of the Act.

5. Looking to the peculiar facts of the case, the appellant is permitted to withdraw the appeal as well as the petition so as to enable the appellant to approach the appellate authority under Section 7(I) of the Act.

6. It is pertinent to note that the reason for granting the above permission is that the appeal which had been filed by the appellant under Section 7(A) of the Act at one point of time was not accepted because certain procedural formalities had not been complied with by it while filing the appeal and as the officer to act as an appellate authority was not available at that time, the appellant had filed a petition in this Court.

7. Needless to say that the period which had been spent by the appellant in filing the petition as

well as the appeal and the review application etc., would be duly considered by the appellate authority for considering the question of condonation of delay as the appellant was agitating his case before this Court; provided the appeal is filed within four weeks from today.

8. In view of the fact that the appellant, after having filed an appeal under the provisions of the Act, did not proceed further with the said appeal and approached this Court, which has resulted into incurring of some costs to the respondent authorities, a sum of Rs.10,000/- is awarded by way of costs to the respondent. It is directed that the said amount shall be deposited by the appellant with the Regional Provident Fund Commissioner, Ahmedabad, within two weeks from today. It is clarified that the said amount shall not be adjusted against any liability of the appellant, but the same shall be treated as the amount of costs.

9. It is hereby clarified that we do not make any observations on merits of the case and the appeal under Section 7(I) or application under Section 7(O) of the Act shall be decided on merits.

10. In view of the above order, the appeal is disposed of as allowed. The order passed by the

learned Single Judge dated 27th September, 2004 in Special Civil Application No.9984 of 2004 and the order passed in Review Application would not survive in view of withdrawal of Special Civil Application No.9984 of 2004.

11. In view of the fact that the appeal is allowed, no order is required to be passed on Civil Application and the same stands disposed of accordingly. Direct service is permitted.

[ANIL R. DAVE, J.]

[HARSHA DEVANI, J.]

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